

**Letter of Findings: 65-20200423
Indiana Overweight Proposed Assessment
For the Year 2020**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's (the "Department") official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department did not agree that Indiana Motor Carrier established that its vehicle was not over the permitted weight limit.

ISSUE

I. Motor Vehicles - Oversize/Overweight Penalty.

Authority: IC § 6-8.1-5-1(c); IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-6-11; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the assessment of an oversize/overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana "metal hauling, warehousing, and processing company." Taxpayer primarily transports, warehouses, and processes steel coils. Publicly available information indicates that Taxpayer has twenty-five drivers either employed by Taxpayer or who are independent "owner operators."

In October 2018, Taxpayer operated one of its vehicles in Indiana on US highway 20. The vehicle was transporting three steel coils. The vehicle was stopped by the Indiana State Police which found that it had a number of apparent safety violations; the driver did not have spare fuses, the reverse lights were inoperable, and the trailer's rear panel was missing. More relevant here, the Indiana State Police found that the vehicle was overweight. While the vehicle had an oversize/overweight permit allowing it to carry 134,000 pounds, the vehicle weighed 135,950 pounds.

Taxpayer's vehicle exceeded the maximum permissible weight by 1,950 pounds.

The Indiana Department of Revenue ("Department") issued a "civil penalty" which the Department, in its notice and proposed assessment sent Taxpayer, described as "the minimum civil amount that may be imposed"

Taxpayer disagreed with the proposed penalty assessment and submitted a protest to that effect. In its protest submission, Taxpayer stated that "we do not believe the vehicle in question was overweight for the permit provided [because] [w]e feel that the scale accuracy is in question."

This Letter of Findings is written to respond to Taxpayer's substantive objections to the penalty.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Taxpayer argues that the vehicle was not overweight because Taxpayer calculates that the vehicle was allegedly only overweight by 1.46 percent (1,950 pounds). Taxpayer points to documentation provided indicating the "portable scale usage on a SLED style (multi-axle) trailer . . . [has] a common 2[percent] inaccuracy weight."

In addition, Taxpayer states that the facility from which the vehicle departed "has a static scale before [the] departure gate . . . [which] would have stopped the driver from exiting the facility if over the 135,000-pound permitted weight."

Taxpayer further explains that it "understands the importance of complying with permit requirements [and] that permit requirements are in place for public safety and state infrastructure of highways."

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, the owner of a vehicle "may not cause or knowingly permit to be operated or moved upon a highway [in Indiana] a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-6-11(b), "[a] person may not violate the terms or conditions of a special permit."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a person "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty" According to IC § 9-20-18-14.5(b), the Department may also subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." These listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

In this case, Taxpayer denies that the vehicle was overweight because the scale used to weigh its vehicle is imprecise and that the purported excess weight was well within the two-percent margin of error inherent in the scale.

In effect, Taxpayer invites the Department to speculate that the portable scale added 1,950 pounds to the actual weight of the vehicle or that the "static scale" should have signaled the driver that the vehicle was overweight. However, the standard in this - as well as any other tax assessment - is that the Taxpayer is required to establish that the assessment was wrong. IC § 6-8.1-5-1(c). Here, Taxpayer has only offered possibilities with documentation establishing that the vehicle was, in fact, at or below the permitted weight. The Department must decline to join in or agree to Taxpayer's speculation.

FINDING

Taxpayer's protest is respectfully denied.

December 2, 2020

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